

Nadler Examines the Americans with Disabilities Act's Application within the Digital Age

Thursday, 22 April 2010

WASHINGTON, D.C. - Today, Congressman Jerrold Nadler (D-NY), Chair of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, chaired an oversight hearing on Achieving the Promise of the Americans with Disabilities Act in the Digital Age - Current Issues, Challenges, and Opportunities.

"Often described as the most sweeping civil rights legislation since the Civil Rights Act of 1964, the Americans with Disabilities Act embodies our promise that the gateways to participation in American society - avenues to work, public services, and public accommodations - will be open to people with disabilities," said Nadler.

"Congress could not have foreseen recent advances in technology, which are now an integral part of our daily lives, but fully expected that the ADA would be broad and flexible enough to keep pace. I am confident that removing barriers - whether they occur in physical or cyberspaces - and ensuring accessibility and equal opportunity when jobs, public services, and public accommodations rely upon access to new technologies, benefits all of us."

In the past 20 years, advances in technology have changed the way we work, conduct business and interact with each other. Employees use the internet to perform research, attend conferences and communicate with colleagues and clients without ever leaving their offices. Government entities have websites that provide information that the public can access at its convenience, and many businesses offer goods and services online so that customers can shop without ever visiting a brick and mortar store.

These changes were not foreseeable when Congress enacted the Americans with Disabilities Act of 1990 (ADA), but Congress drafted the law so that it would be broad and flexible enough to encompass new technologies as they emerged. Passed before the creation of the world's first web server, browser or website, ADA does not directly address application to emerging information technology. As a result, principles governing access to emerging technology for people with disabilities in the key areas of employment, public services and public accommodation have developed through application of ADA's broad non-discrimination mandate, including its requirement of reasonable accommodation and modification.

Witnesses at the hearing were: Samuel Bagenstos, Principal Deputy Assistant Attorney General, U.S. Department of Justice; Mark Richert, Esq., Director, Public Policy, American Foundation for the Blind; Judy Brewer, Director, Web Accessibility Initiative, World Wide Web Consortium; Steve Jacobs, President, IDEAL Group, Inc.; and, Daniel F. Goldstein, Attorney, Brown, Goldstein & Levy, LLP

The following is the text of Nadler's opening statement:

"Today's hearing examines the application of the Americans with Disabilities Act in the digital age.

"This July we will celebrate the 20th anniversary of the Americans with Disabilities Act of 1990. Often described as the most sweeping civil rights legislation since the Civil Rights Act of 1964, the ADA embodies our promise that the gateways to participation in American society - avenues to work, public services, and public accommodations - will be open to people with disabilities.

"We renewed that promise two years ago when we came together in a fully bipartisan effort to pass the ADA Amendments Act of 2008, which responded to court decisions interpreting the definition of disability too narrowly, and in a manner that was completely at-odds with the broad remedial purposes of this great law. I thank the Ranking Member,

my colleague from Wisconsin, Jim Sensenbrenner, the Chairman of the full Committee, John Conyers, and the Majority Leader, Steny Hoyer, for their leadership on that bill.

"Today's oversight hearing shows that our commitment to achieving the ADA's promise did not end in 2008. That commitment endures and, as the world around us changes and new gateways to participation in American life are opened, we must ensure that people with disabilities are included.

"When Congress passed the ADA twenty years ago, we were not communicating by email, blog, or tweet. We were not filling virtual shopping carts with clothes, books, music, and food. We weren't banking, renewing our driver's licenses, paying taxes, or registering for and taking classes online.

"Congress could not have foreseen these advances in technology, which are now an integral part of our daily lives. Yet Congress understood that the world around us would change, and believed that the non-discrimination mandate contained in the ADA should be broad and flexible enough to keep pace.

"As one Committee report explained, we "inten[d] that the types of accommodation and services provided to individuals with disabilities, under all of the titles of this bill, should keep pace with the rapidly changing technology of the times."

"Today, we have a chance to hear from the Department of Justice and other experts on whether Congress's expectation is being met.

"Through informal guidance, the Department consistently has taken the position that public and private entities must ensure that individuals with disabilities have equal access when their services or goods are provided over the internet or through other evolving technologies. But the Department has yet to modernize its regulations to make that clear, and the courts have struggled to articulate a consistent approach.

"This lack of clarity is harmful. It places individuals with disabilities at great risk of being left behind. It also leaves public and private entities uncertain as to whether they are subject to, and in compliance with, ADA requirements. I therefore urge the Department to update its regulations, and hope to hear today about its plans to issue guidance that clarifies application of the law and provides meaningful resources for entities seeking to comply.

"With this additional clarity and guidance, I am hopeful that we will avoid a repeat of the problems that we encountered with the courts' misinterpretation of the definition of the word "disability" in the ADA. In correcting the courts' unduly restrictive interpretation of this term, we made clear that we will not tolerate a narrow reading of the ADA. That same message should apply with full force as the courts interpret and apply key phrases like "place of public accommodation" in Title III of the ADA.

"The notion that Congress prohibited discrimination only when it occurs at a physical place, or required structural changes only to physical places is inconsistent with the spirit and the plain language of the law.

"In recognizing and seeking to remove barriers that had limited the access and opportunity of individuals with disabilities, Congress certainly did require changes to physical structures. But that was not all.

"Congress also required, among other things, reasonable accommodations and modifications to policies, practices, services or activities, the provision of auxiliary aids, and the removal of communication barriers. None of these requirements can accurately be characterized as limited to physical places.

"I am confident that removing barriers - whether they occur in physical or cyberspaces - and ensuring accessibility and equal opportunity when jobs, public services, and public accommodations rely upon access to new technologies, benefits all of us. I am also confident that achieving this goal is not unduly burdensome, and it will not stanch innovation or creativity.

"Having been fortunate enough to work with a young attorney on the Subcommittee, who - in addition to being brilliant and thoughtful, is also blind - I have seen, and enjoyed, the benefits that a few simple accommodations can bring. And I can assure you that we all have a lot to lose if and when those accommodations are not made.

"I am pleased to welcome our witnesses today, and I look forward to hearing from them on how we can continue to ensure that the promise of the ADA is achieved in the digital age."